

REMARKS

Claims 1-4, 13-22 and 31-34 are presently pending in the case. Claim 1 has been amended. The amendments are supported by the specification as originally filed. For example, see page 2 lines 10-21. Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Allowable Claims

Applicant acknowledges with appreciation the Examiner's indication that claims 13-22 and 31-34 are allowable.

Independent claim 1

The Examiner rejected claims 1-4 under 35 USC §102(b) as being anticipated by U.S. Patent 5,723,189 to Sudo (hereinafter Sudo). The rejection is traversed.

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." In re Paulsen, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Invalidity on the ground of 'anticipation' requires lack of novelty of the invention as claimed ... that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim." Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001). Thus, for a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention and the elements must be arranged as in the claim. Non-disclosure of a single element, feature or limitation of the claim or an arrangement other than that which is claimed negates anticipation.

Sudo does not anticipate independent claim 1. Claim 1 is to a receptacle that is shaped and adapted to be insertable into a dry powder inhaler. This positively recited

feature is not disclosed by Sudo. Instead, Sudo is directed to liquid substances. Even though a powder container is disclosed in Figure 5, that powder is for subsequent dissolution (see column 21 line 50). Therefore, there is no disclosure, teaching or need for a dry powder inhaler. Since Sudo does not disclose each and every feature set forth in claim 1, it does not anticipate the claim. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereof under 35 USC §102.

The Examiner's comments do not serve to establish Sudo as an anticipatory reference. The Examiner contends that Sudo is capable of being used in the claimed manner. However, the Examiner has provided no evidence of this. For example, the Examiner has not shown a dry powder inhaler into which the Sudo bag is capable of being inserted. Furthermore, there is no indication given by Sudo or evidence otherwise provided by the Examiner that the powder in Sudo is aerosolizable or that it may be administered as a powder.

Sudo does not anticipate independent claim 1 for additional reasons. For example, claim 1 recites "wherein the raised central region is shaped to facilitate extraction of the powdered medicament when air or another gas is drawn through the cavity." This feature is lacking in Sudo. First, as discussed above, Sudo does not disclose the aerosolization of a powder but rather discloses a powder that is to be dissolved before being administered. Secondly, when dissolved and administered, the alleged "raised central region" would not facilitate extraction of the medicament. And third, Sudo is not capable of being used in a manner which would read on the claim limitation.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 2-4 which depend from claim 1 and are not anticipated by Sudo for at least the same reasons as claim 1.

Conclusion

The claims are allowable for the reasons given above. Therefore, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: September 22, 2010

By: 

Guy V. Tucker
Reg. No. 45,302

Guy Tucker
Janah & Associates
650 Delancey Street, Suite 106
San Francisco, CA 94107
Phone: (415) 538-1555
Fax: (415) 538-8380